No. 302

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1949

DISTRICT OF COLUMBIA, *Petitioner*,

vs.

GERALDINE LITTLE, alias MILDRED PARKER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto your Honors that:

STATEMENT OF THE MATTER INVOLVED

On the 10th day of September, 1947, an information was filed in the Municipal Court for the District of Columbia, Criminal Division, charging that the respondent on the 9th day of September, 1947, in the District of Columbia, and

on premises 1315 10th Street, N. W., did therein hinder, obstruct and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of the Health Regulations contrary to and in violation of an Act of Congress and Health Regulations (R. 3).

The respondent pleaded not guilty and was tried by the Court without a jury (R. 4). The Trial Court took the case under advisement and on April 10, 1948, filed a memorandum opinion (R. 4-8). Respondent was convicted and sentenced to pay a fine of $25.00 or in default thereof to serve a term of ten days in jail (R. 4).

Upon petition of respondent specifying several alleged errors in the trial of the case, including the claim that the attempted entry and inspection of respondent's dwelling over the objection of respondent was an invasion of her constitutional rights of privacy (R. 10), the Municipal Court of Appeals for the District of Columbia allowed an appeal.

In an unanimous opinion (R. 14), the Municipal Court of Appeals for the District of Columbia reversed the conviction, holding that the regulation involved is not unreasonable on its face, but, since its requirements may be carried out within the framework of the Constitution by obtaining a warrant, health officers, when challenged, cannot inspect a private dwelling without a warrant.

The petitioner applied to the United States Court of Appeals for the District of Columbia Circuit for allowance of an appeal, contending that there existed no judicial process for the obtaining of a warrant authorizing entry of a private dwelling for the purpose of inspection even where there is probable cause to believe a condition menacing to health exists therein, that the holding of the Municipal Court of Appeals was not consonant with the scope of the police power as indicated by decisions of this Court and of the United States Court of Appeals, and that the inspection sought to be made of respondent's premises even if judged in the light of the Fourth Amendment was

not such an unreasonable search as is prohibited by that Amendment.

In a divided opinion (R. 30) the United States Court of Appeals affirmed the judgment of the Municipal Court of Appeals for the District of Columbia, the majority holding that there is no distinction between inspecting a private dwelling for the purpose of ascertaining whether or not laws relating to sanitation and safety are being observed and searching it for evidence of crime; that the Fourth Amendment is not limited to criminal cases, but prohibits any invasion of a private dwelling by a government official without warrant, except in case of acute emergency or unavoidable crisis, regardless of the purpose of the inspection, and that any Act of Congress purporting to permit the invasion of homes by government officials, other than in case of such emergency, would be wholly void.

In his dissenting opinion (R. 40), Judge Holtzoff held that the Fourth Amendment relates only to searches and seizures in connection with criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties, and that it does not affect inspections conducted in the course of administration of statutes and regulations intended to promote public health or public safety, if no seizure is intended.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered August 1, 1949 (R. 30). The jurisdiction of this Court to issue the Writ applied for is invoked under Title 28, U. S. Code, Sec. 1254 (Act of June 25, 1948, 62 Stat. ——, Ch. ——).

QUESTION PRESENTED

The question presented is whether the entry of a private dwelling without warrant by a health officer or other municipal official under reasonable conditions and circumstances of

fact in the discharge of duties imposed upon him by Acts of Congress and regulations promulgated thereunder designed to protect public health, safety and welfare, is unlawful as violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The United States Court of Appeals for the District of Columbia Circuit in this case has decided a question of substance relating to the construction and application of the Constitution of the United States and statutes enacted by the Congress which has not, but should be, settled by this Court.

2. The United States Court of Appeals for the District of Columbia Circuit has decided that inspection of a dwelling by a health officer, for the enforcement of health laws and regulations validly enacted and adopted in the exercise of the police power, and for which no warrant has ever been provided, cannot be made without a warrant over the objection of the occupant.

3. *The question is of* the greatest *importance to the* District of Columbia in the enforcement of health and other laws enacted for the preservation of health, safety and welfare, and of regulations promulgated thereunder. The holding of the United States Court of Appeals for the District of Columbia Circuit has rendered administratively unenforceable, if not void, every act of Congress imposing upon municipal officers the duty of inspecting dwellings and other buildings for the purpose of securing compliance with such laws and regulations in the District of Columbia. No statute has been enacted providing for the issuance by any court or magistrate of an "inspection warrant" to authorize the officers charged with such duties to enter a dwelling against the will of the owner or occupant for the

purpose of making inspection. The suggestion of the Court of Appeals (R. 39) provides no solution of the problem; for no such statute can be drafted which will be effective and also in compliance with the limitations of the Fourth Amendment.

4. This Court should determine whether the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures apply to every inspection of a private dwelling sought to be made by a health officer or other municipal official charged with the duty of enforcing laws and regulations enacted and promulgated under the police power, or whether they should be construed to apply only to criminal prosecutions and to proceedings of a quasi-criminal nature for the enforcement of penalties.

DISTRICT OF COLUMBIA,
Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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THE OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia is reported in 62 A. 2d 874.

The opinion of the United States Court of Appeals for the District of Columbia Circuit is not yet reported.

GROUNDS OF JURISDICTION

The grounds on which the jurisdiction of this Court is invoked are:

1. The United States Court of Appeals has decided a question of substance relating to the construction and application of the Constitution and of statutes enacted by the Congress of the United States in the exercise of the police power which has not been, but should be, settled by this Court.

2. The United States Court of Appeals has not given proper effect to the decisions of this Court applicable to the question decided.

3. The United States Court of Appeals has decided an important question of law involving the Constitution and statutes of the United States applicable to the District of Columbia, and regulations promulgated thereunder, which decision is in conflict with the decisions of this Court and its prior decisions relating to the Congress and to the police power.

STATEMENT OF THE CASE

The respondent here was charged (R. 3), tried and convicted (R. 4) upon an information alleging that on September 9, 1947 she hindered, obstructed and interfered with an inspector of the Health Department in the performance of his duty in violation of law.

The regulation upon which the information was based is contained in Paragraph 12 of the Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds (R. 26; App 26). The regulation stems from a Joint Resolution of the Congress (R. 22; App. 25) which, in the exercise of its exclusive legislative authority over the District of Columbia (Constitution of the United States, Article 1, Section 8, Clause 17), has authorized the Commissioners of the District of Columbia to make all such usual and reasonable police regulations as they might deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia. By later Acts (R. 22, 27; App. 26), the Congress granted specific authority to the Commissioners of the District of Columbia to make all regulations necessary for the collection and disposition of garbage in the District of Columbia. Pursuant to such delegated authority, the Commissioners of the District of Columbia promulgated regulations for the use and occupancy of buildings and grounds, and regulations prescribing the manner in which garbage should be stored by the occupants of dwelling houses pending its collection by municipal agencies (R. 26-28; App. 26-28). These regulations impose upon the Health Officer the duty of inspecting buildings for the purpose of ascertaining whether or not their condition is such as to affect the public health, safety and welfare (R. 26).

The respondent pleaded not guilty to the charge contained in the information and the case was tried by the Court without jury on November 3, 1947 (R. 4).

At the trial below the prosecution adduced testimony to establish the following facts:

An occupant of premises No. 1315 10th Street, N. W., made complaint to the Health Officer that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities, whereupon the Health Officer directed an inspector of the Health Department to make an inspection of said premises. Accompanied by a uniformed member of the Metropolitan Police Department the uniformed health inspector proceeded to said premises. Upon arrival the health inspector and the police officer observed one Allen about to enter said premises. The health inspector identified himself as an inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter the premises for the purpose of making an inspection. Allen refused to permit the health inspector to enter, stating that the owner of the premises was not at home. During the discussion between the health inspector and Allen a woman, who at that time was unknown to the health inspector or to the police officer, was standing across the street from the premises. She called to Allen not to permit the inspector to enter the premises. Thereafter this woman came across the street and up to the porch of the said premises and continued to tell Allen not to permit the inspector to enter the said premises for the purpose of making an inspection. The police officer asked the woman if she were the owner of the premises and upon her denial of ownership of the premises instructed her to go about her business. (R. 12). Allen was then informed that he was interfering with a health officer in the performance of his duties, and was placed under arrest. The police officer thereupon took Allen to the nearest police call box. The unidentified woman followed along protesting the right of the health inspector to enter the premises. She finally

identified herself as the owner of the premises, and demanded that she also be arrested for interfering with a health officer in the performance of his duties. She thereupon seized the health inspector's arm and attempted to grab the papers he was holding in his hand. She was then arrested.

The police officer testified substantially the same as the health inspector. On cross examination the health inspector and the police officer both testified they had no warrant or other process of court. The District of Columbia thereupon announced its case as closed. (R. 13).

The respondent testified in her own behalf substantially as follows: That she came from across the street with a bundle of groceries in her hand and saw the health inspector and the police officer in front of her door talking to Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that the health inspector and the police officer then demanded that she permit the health inspector to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; and that after some discussion respondent and Allen were placed under arrest for interfering with a health inspector in the performance of his duties and taken to the nearest patrol box. (R. 13).

The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of the respondent's dwelling. No search of her dwelling was made and no demonstrative evidence was seized. No facts obtained by visual observation of the confines of her dwelling were introduced into evidence against her. (R. *passim*). The trial court took the case under advisement, and on April 10, 1948 filed a memorandum opinion holding the defendant guilty of a violation of the regulation and thereafter imposed sentence (R. 4-8). Upon appeal, the Municipal Court of Appeals for the District of Columbia reversed, holding that "It is

within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse or filth, but regulations of this kind must not unduly infringe upon individual rights." (62 A. 2d 876; R. 17-18). The Municipal Court of Appeals further held that

> " * * * The regulation does not require an unconstitutional method of search. It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face.
>
> "We express an opinion only as to its application under the present facts. We believe that the conditions of this case did not warrant the action taken by the health officer. Neither summary abatement nor entry over objection can be justified under the circumstances. * * * " (62 A. 2d 876; R. 19).

Petitioner duly applied for the allowance of an appeal from the judgment of the Municipal Court of Appeals for the District of Columbia to the United States Court of Appeals for the District of Columbia Circuit and the appeal was allowed because of the importance of the question raised to the enforcement of the health laws.

In its opinion affirming the judgment of the Municipal Court of Appeals, the United States Court of Appeals for the District of Columbia Circuit, while recognizing that no statutory procedure existed in the District of Columbia for issuance of a magistrate's warrant to conduct an inspection of a dwelling (R. 39), nevertheless held:

> "* * * that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein." (R. 38).

In his dissenting opinion Judge Holtzoff held that:

> "* * * the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences" (R. 40)

and declared that the Fourth Amendment does not apply to inspection in aid of the police power, if no seizure is intended (R. 42), and that the right to inspect a dwelling in the interests of public safety and public health is a qualification upon the right of privacy in the home, which if reasonably exercised, is perfectly proper. (R. 45).

This petition seeks a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to review the judgment of that Court in the instant case.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that the Fourth Amendment to the Constitution of the United States applies to inspections of private dwellings by health officers for the purpose of securing observance of laws enacted under the police power to the same extent that it applies to searches of persons and dwellings and the seizure of articles for use as incriminatory evidence in criminal prosecutions.

2. In holding that a private dwelling may not be inspected without a warrant, over the objection of the owner or occupant, by a health officer for the purpose of securing compliance with laws and regulations enacted and made in the exercise of the police power, in the absence of acute emergency or unavoidable crisis.

STATUTES INVOLVED

Constitutional provisions, statutes and regulations involved and other statutes and regulations affected by the decision of the United States Court of Appeals are set forth in the Appendix.

SUMMARY OF ARGUMENT

The question posed, whether the Fourth Amendment shall operate to restrict an exercise of the police power bearing no relationship to incrimination of crime, is one which can arise only in the District of Columbia; for only in the District of Columbia does the Federal Government, the only entity restricted by the Fourth Amendment, have and exercise the inherent police power of the sovereign. Since the question has not previously been raised in this jurisdiction, it is a novel one in the Federal Courts.

This Court and the subordinate Federal Courts have consistently recognized that the search and seizure clause of the Fourth Amendment is logically supplementary to that portion of the Fifth Amendment which protects the individual against self-incrimination, Boyd v. United States, 116 U. S. 616, and that the only effective method of enforcing the Fourth Amendment in the Federal Courts is the exclusion from evidence in a criminal proceeding of those articles seized in violation of the Fourth Amendment from the home or person of the individual accused of crime. Weeks v. United States, 232 U. S. 383. The opinion of the United States Court of Appeals in the instant case stands alone at variance with these decisions; for it holds that the inspection without warrant of a dwelling by an official attempting to exercise the police power delegated to him in aid of the public health, safety and welfare is effectively barred by the terms of the Fourth Amendment in the absence of a compelling emergency, in which case it is recognized that public officials "must take such steps as are necessary to protect the public." (R. 39).

This exception demonstrates the flaw in the reasoning of the majority of the Court below; for if any line of demarcation or exception to the application of the Fourth Amendment is countenanced, the issue is then one of reasonableness in the exercise of the police power as determined by

the facts, and the necessary effect of the holding of the majority is that the acts of the health inspector in the instant case constituted an unreasonable exercise of the police power reposed in him.

But there exists in the record certified herewith an abundance of uncontradicted evidence to establish that in fact the proposed inspection was a reasonable one if any routine inspection of a dwelling can be justified as a logical projection of the police power supporting the interest of the public in its own health and safety. The respondent never asserted or made an effort to prove that the proposed inspection was in fact unreasonable, but relied entirely upon her claim that, without a warrant, the proposed inspection was in violation of her constitutional guaranties. (R. 13, 10).

The importance of the effect of this decision, both upon the abstract constitutional doctrines already incorporated into the law of the land, and upon the practical administration of inspection laws (App. 28-32) by various municipal officials upon whom is imposed the duty and responsibility of the protection of the health, safety and welfare of the public, can hardly be overestimated. Thousands of inspections of dwelling houses are conducted every year in aid of the various phases of the police power. All, or the overwhelming majority of them, are based upon good reason, but certainly not more than a minority are based upon the probable cause required by the Fourth Amendment as the necessary prerequisite for the issuance of a magistrate's warrant.

The balancing of the interest of the individual in privacy against the interest of the public in protection against sickness and epidemic is a problem which cannot be solved in the manner suggested by the majority opinion. It is sufficiently clear not to require argument that if the officer charged with the duty of making inspections has probable cause to the extent necessary to obtain a magistrate's warrant, he need not make inspection but may take immediate action to secure compliance with the law. Accordingly, if

the majority opinion be correct, the enactment of a statute establishing a procedure for the issuance by a magistrate of "inspection warrants" will, if it requires probable cause, be of no practical value in the making of inspections and will, if it does not require probable cause, be violative of the Constitution as interpreted by the majority of the Court below.

Either the majority opinion of the Court below is correct and the right of privacy must be maintained whole and unblemished at the expense of reasonable enforcement of laws designed for the public good, or the judgment of the majority below must be reversed, upon the ground that the United States Court of Appeals has mistakenly enlarged the scope of the Fourth Amendment to make it applicable to a field of law not intended by the framers of that amendment and not sanctioned by the decisions of this Court construing it.

The Congress, the courts, the community and every American are entitled to the views of this Court upon such a far reaching and fundamental question.

ARGUMENT

I

The Question is Novel

Exclusive power to legislate for the District of Columbia is expressly delegated to Congress by Article I, Section 8, clause 17 of the Constitution of the United States. It is well settled that in the exercise of that exclusive legislative authority

> "* * * Congress may legislate within the District for every proper purpose of government." *Neild* v. *District of Columbia*, 71 App. D. C. 306, 309, 110 F (2d) 246, 249,

and it has been declared that

> "* * * Although the police power fundamentally belongs to the states and not the federal govern-

> ment, the right to exercise it for the general good is an inherent attribute of sovereignty. It follows that the Congress may legislate in the exercise of the police power with respect to matters local to the District of Columbia." *Kindleberger* v. *Lincoln Nat. Bank of Washington*, 81 U. S. App. D. C. 101, 106, 155 F (2d) 281, 286, 167 A. L. R. 1011, 1017,

and that

> "The power of Congress to enact regulations affecting the public peace, morals, safety, health, and comfort within the District of Columbia is the same as that of the several state legislatures within their respective territorial limits. It is no less, nor can it be greater; * * *" *Moses* v. *United States*, 16 App. D. C. 428, 50 L. R. A. 532, 535.

Since the Fourth Amendment is a limitation only upon the United States, the question presented herein could arise only where Congress may undertake to exercise this "police power", that is, only in the District of Columbia. This is the first reported decision in which the Fourth Amendment has been invoked to test the scope of the power of Congress to legislate in the exercise of the police power possessed by it as an inherent attribute of the sovereignty granted by the 17th clause of Section 8, Article I of the Constitution.

II

The Question is Important

It is obvious from a review of the statutes providing for inspection without warrant contained in the record herein (R. 22-24; App. *passim*) that Congress has, contrary to the view of the majority below, acted upon the assumption that inspection of private dwellings for the protection of health and safety could be conducted under reasonable conditions of fact without warrant.[1] Municipal regulations implement-

[1] Compare Act of Mar. 3, 1921, R. 24, App. 31, (Weights and Measures).

ing the specific provisions of those Acts of Congress, as well as administrative custom and usage, have developed upon the assumption that the inspection of private dwellings in the enforcement of the police power does not require a magistrate's warrant. Over the course of years the various inspection divisions of those agencies of the District of Columbia charged with the enforcement of the police power have grown to a point where actually tens of thousands of inspections of private dwellings are made by the municipality each year.

The Annual Report of the Commissioners of the District of Columbia to the Congress for the fiscal year ended June 30, 1948 establishes, for example, that the Bureau of Public Health Engineering of the Health Department in that year made 24,626 original inspections and 34,786 reinspections, which resulted in the issuance of 22,001 orders to correct nuisances and the abatement of 21,773 nuisances. Approximately one-third of those nuisances abated involved the existence of rubbish and garbage potentially menacing to the health and safety of the community. (Report, p. 179).

The Plumbing Inspection Division of the Engineer Department conducted 40,784 inspections of plumbing in existing structures and buildings under construction or repair. Included in that figure were 5,213 complaints of defective plumbing which were ordered abated after inspection. (Report, p. 123). Like figures are available from the Building Inspection Division of the Engineer Department of the District of Columbia, the Bureau of Preventable Diseases of the Health Department, the Water Division, the Electrical Inspection Division, and other agencies of the municipality engaged in the protection of the public health, safety and welfare, and the protection of property, by means of inspections of buildings, including private dwellings in the District of Columbia.

No existing statute provides for a magistrate's "inspection" warrant nor could one be drafted which would be

both effective and in compliance with the Fourth Amendment as applied by the Court below; for possession of the personal knowledge and probable cause required for a warrant under the Fourth Amendment would enable the health official to take immediate action to secure compliance with the law and render inspections unnecessary. For this reason, the opinion of the Court below strikes a grievous and crippling blow at the very foundation upon which practical enforcement of the police regulations of the city has rested for over seventy years.

The opinion of the United States Court of Appeals, if allowed to stand, will have even wider repercussions than these however. As an expression of the highest Federal Court yet to consider this issue, it is a cogent precedent influencing the decisions of those State Courts in which the same clause in various State Constitutions may be invoked to limit and restrict the reasonable exercise of the police power in other municipalities.

III

The Position of Petitioner is Sufficiently Meritorious to Justify Consideration by this Court

It is the position of petitioner that there is a fundamental distinction between entry of a dwelling for the purpose of securing incriminatory evidence and inspections made under the police power for the purpose of securing compliance with reasonable laws designed to protect public health, life and safety. In the first class of cases the sole purpose of the invasion is to secure evidence upon which to base proceedings looking to punishment of a law violator. In the latter class of cases the whole purpose of the inspection is to ascertain whether laws enacted in the exercise of the police power are being violated and if so, to require the taking of steps necessary to secure the abatement of a condition which is, or if not corrected will become, a positive menace to life, health or safety.

In the instant case there is no evidence that a violation of law or regulation existed within the dwelling. If inspection had been consummated and if the condition alleged had been found to exist, criminal prosecution would not necessarily have followed; summary abatement proceedings might have been indicated. But the Court below has placed the bar of the Fourth Amendment across the threshold to prohibit the inspection.

The inherent governmental power of the sovereign is not unrestricted in the absence of the application to it of the search and seizure clause of the Fourth Amendment. There is implicit within the police power a restriction and limitation of reasonableness. If the act to be done bears no reasonable relationship to the public purpose to be attained, or if it be an abusive exercise of a course of conduct reasonably related to the public purpose it attempts to serve, it is unlawful and void as violative of the due process clause of the Fifth Amendment.

Up to the time of the decision below, both Congress and the Courts generally throughout the nation have regarded the limitation of reasonableness inherent in the police power as a sufficient protection of the Constitutional rights of the people. In this case, despite the vigorous opposition of Judge Holtzoff, and without regard to the repeated enactments of Congress (R. 23-24, App. *passim*) by which it provided for the protection of the life, health, safety and welfare of the community by use of the process of inspection, the majority of the Court below has blended the search and seizure clause of the Fourth Amendment and an unprecedented conclusion that the standard of reasonableness under the police power is controlled by the existence of an acute emergency, into an artificial dogma to operate as an additional and unjustified restriction upon the reasonable exercise of the police power.

It is apparent that in this case the interest of the community in protection against the hazards which call for the

exercise of the police power is arrayed against the interest of the individual in the right of privacy. It is submitted that this conflict of interests can and should be resolved by application of presently existing principles of law, rather than by enlargement of the scope of the search and seizure clause of the Fourth Amendment to restrict the whole field of police power enforcement to which, until the majority opinion below, it had no application.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that a proper construction of the Constitution and of the Acts of Congress involved, and of the Acts of Congress which will be affected by the decision of the United States Court of Appeals, may be had, and that to such an end a Writ of Certiorari should be granted and this Court should review the decision of the United States Court of Appeals for the District of Columbia Circuit and finally reverse it.

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APPENDIX

Article 1, Section 8, Clause 17 of the Constitution provides:

> *"The Congress shall have power* • • • To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States • • •"

The Fourth Amendment to the Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Act of March 3, 1901, 31 Stat. 1337, ch. 854, § 911; and of April 5, 1938, 52 Stat. 199, ch. 72, § 3, D. C. Code, 1940 ed., Section 23-301 (Search Warrants):

> "Upon complaint, under oath, before the police court, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for

immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22-1501, 22-1503, 22-1504, 22-1505, 22-1507, 22-1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court or United States commissioner issuing said warrant, as the case may be.

"The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

" 'Whereas there has been filed before _____ an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of _____ before the police court, or United States commissioner, as the case may be, to be dealt with and disposed of according to law.' "

Act of June 11, 1878, 20 Stat. 102, ch. 180, (Organic Act the District of Columbia):

"Sec. 8. That in lieu of the board of health now authorized by law, the Commissioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished."

"Sec. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require."

Ordinance of the Late Board of Health of the District of Columbia legalized by Joint Resolution approved April 24, 1880, 21 Stat. 304; Supplement to the Revised Statutes of the United States 303, 306; (D. C. Code, 1940, Section 611):

"Sec. 26. That it shall be the duty of the health-officer appointed by this board, upon receiving information or obtaining knowledge of the existence of any thing or things herein declared to be nuisances, or any thing or things which may

hereafter be declared to be nuisances by any ordinance or resolution enacted or adopted by this board, to notify the person or persons committing, creating, keeping, or maintaining the same, to remove, or cause to be removed, the same within twenty-four hours, or such other reasonable time as may be determined by this board, after such notice be duly given; and if the same be not removed by such person or persons within the time prescribed in said notice, it shall be the duty of the health-officer aforesaid to remove, or cause to be removed, such nuisance or nuisances, and all costs and expenses of such removal shall be paid by the persons committing, creating, keeping, or maintaining such nuisance or nuisances; and if the said costs and expenses thus accruing shall not be paid within ten days after such removal by said health-officer, the same shall be collected from the person or persons committing, creating, keeping, or maintaining such nuisances, by suit at law."

Act of August 11, 1939, 53 Stat. 1408, Ch. 691, *as amended* August 8, 1946, 60 Stat. 921, ch. 871, Secs. 1 and 8; D. C. Code, 1940 ed., Supp. VI, Secs. 6-118, 6-119f: (Communicable Diseases):

"The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable and preventable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease."

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"Sec. 8. The Health Officer may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this Act and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of this Act."

Section 2 of the Joint Resolution approved February 26, 1892, 27 Stat. 394, Res. No. 4, D. C. Code, 1940 ed., Sec. 1-226:

"The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."

Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds, promulgated April 22, 1897, amended July 28, 1922:

* * * * * * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such premises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if, upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part

thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

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"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

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"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."

Act approved January 27, 1905 (33 Stat. pt. 1, 621), entitled "An Act To Authorize the Commissioners of the District of Columbia to enter into contract for the collection and disposal of garbage, ashes, and so forth."

"* * * *Provided further*, That said Commissioners are hereby authorized to make all regulations necessary for the collection and disposal of garbage, miscellaneous refuse, ashes, dead animals, and night soil and to annex to such regulations such penalties as may in the judgment of said Commissioners be necessary to secure the enforcement thereof."

Police Regulations of the District of Columbia, Article XXI,—Garbage, Ashes, and Other Refuse:

"Section 1. The word 'garbage' whenever it occurs in this article shall be held to mean the refuse of any animal and vegetable foodstuffs, except oyster and claim shells; and the words 'dead animals' whenever they occur in this article shall be held to mean any dead animal not killed for food.

"Sec. 2. Occupants of dwelling houses, proprietors of boarding houses, commission warehouses, hotels, restaurants, and other places where garbage is accumulated, and owners, agents, and occupants of apartment or tenement houses shall provide for the use of such premises a sufficient number of receptacles to contain all garbage which may accumulate on said premises during the usual interval between the collections of garbage therefrom and shall keep such receptacles at all times in good repair. Each such receptacle shall be made of metal, watertight, provided with a tight cover with a handle, and shall be so constructed that the contents can be removed therefrom easily and without delay. No person without a permit from the supervisor of city refuse division shall use for the reception of garbage any receptacle having a capacity of less than 3 nor more than 10 gallons nor more than 1 receptacle containing less than 10 gallons. Garbage receptacles of the sunken type shall be located at the point of collection or the interior can must be covered and set out for collection as herein provided.

"Sec. 3. Occupants of any dwelling house, apartment, or tenement house, and each proprietor of any boarding house, commission warehouse, hotel, restaurant, and other place where garbage is accumulated shall cause all garbage from his or her premises to be put in the receptacle provided for the purpose. Each person aforesaid shall cause such receptacle to be kept covered at all times and to be placed and to remain between the hours of 7 a. m. and 6 p. m. of each day on which the collection is made from his or her premises, in such position as to be easily accessible to the garbage collector, or as may be designated by

the supervisor of city refuse division. No person shall place or cause to be placed in any garbage receptacle any substance other than garbage, which shall at all times be kept free from dishwater and as dry as practicable."

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OTHER ACTS OF CONGRESS AFFECTED

Section 4 of the *Act approved April 23, 1892,* 27 Stat. 21, D. C. Code, 1940 ed., Sec. 1-727, (Plumbing Inspection):

"The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced."

Section 1 of the *Act approved March 1, 1899,* 30 Stat. 923, as amended, D. C. Code, 1940 ed., Sec. 5-501: (Condemnation of Unsafe Buildings):

"If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the inspector of buildings shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or

other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby."

Section 2 of the *Act approved April 26, 1904,* 33 Stat. 307, D. C. Code, 1940 ed., Sec. 1-720: (Electrical Inspections):

"The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1-719 to 1-723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any provisions of said sections, or of any regulations of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the

chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1-719 to 1-723 shall be in the police court of said District, in the name of the District of Columbia."

Act of May 1, 1906, 34 Stat. 157, Secs. 1 and 11, D. C. Code, 940 ed., Secs. 5-601, 5-611: (Condemnation of Insanitary Buildings)

"There is hereby created in and for the District of Columbia a board to be known as the Board for the condemnation of Insanitary Buildings in the District of Columbia, to consist of the assistant to the engineer commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and removed, as may be required by the provisions of this chapter. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said Dis-

trict for the purpose of inspecting the same. Said board shall report its operations to the commissioners of the District of Columbia from time to time as said commissioners direct. Said commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and officers of the government of said District."

* * * * * * * * * *

"Sec. 11. No person shall interfere with any member of the Board for the Condemnation of Insanitary Buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this Act to be done by or by authority and direction of said board."

Act of March 3, 1921, 41 Stat. 1224, ch. 118, § 24, D. C. Code, 1940 ed., Sec. 10-126: (Weights and Measures)

"There is hereby conferred upon the superintendent, his assistants and inspectors, police power, * * *. The superintendent, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this chapter and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests. * * *"

Act of June 25, 1936, 49 Stat. 1917, ch. 802, § 10, D. C. Code, 1940 ed., Sec. 1-711: (Boiler Inspection)

"The boiler inspector and his assistants shall have the right to enter, in the performance of his

or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties."